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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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STEVEN MARK HAYDEN, SR.,

Plaintiff,

v.

COMMERCIAL LITIGATION DOCKET, et  
al.,

Defendants.

Case No. 2:18-cv-02403-RFB-CWH

**ORDER**

13 Presently before the court is defendant Gerald D. Colvin's motion to stay discovery and  
14 for a protective order (ECF Nos. 91, 92), filed on May 7, 2019. The motion is unopposed.

15 **I. BACKGROUND**

16 The parties are familiar with the facts of this case and the court will not repeat them here  
17 except as necessary. Colvin moves to stay discovery pending the court's decision on his motion  
18 to dismiss for insufficient service of process under Rule 12(b)(5) of the Federal Rules of Civil  
19 Procedure (ECF No. 79).<sup>1</sup> The motion also requests dismissal on other grounds, including lack of  
20 personal jurisdiction and failure to state a claim. Colvin argues that the motion to dismiss is  
21 dispositive regarding his participation in the case and presents key issues of the court's  
22 jurisdiction. Colvin also notes that Hayden has commenced serving written requests for  
23 admissions although the parties have not had a Rule 26(f) conference. Colvin met and conferred  
24 with Hayden regarding the procedural defects related to the premature requests for admissions,  
25 scheduling of a Rule 26(f) conference, and potentially staying discovery, but the parties were  
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27 <sup>1</sup> The motion to dismiss (ECF No. 79) is pending before the United States district judge  
28 assigned to this case and will be addressed in due course.

1 unable to reach an agreement on these issues. Finally, Colvin requests that the court exercise its  
2 inherent authority to impose monetary sanctions against Hayden for what Colvin argues is bad  
3 faith litigation conduct. Hayden did not oppose the motion, which constitutes a consent to the  
4 granting of the motion under Local Rule 7-2(d).

## 5 **II. DISCUSSION**

6 Courts have broad discretionary power to control discovery, including the decision to stay  
7 discovery. *See e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). When evaluating  
8 whether to stay discovery, the court considers the goal of Rule 1 of the Federal Rules of Civil  
9 Procedure, which directs that the rule must be “construed and administered to secure the just,  
10 speedy, and inexpensive determination of every action.” *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D.  
11 597, 602 (D. Nev. 2011) (citation omitted). But the Rules do not provide for an automatic stay of  
12 discovery when a potentially dispositive motion is pending. *Id.* at 600–01. Thus, a pending  
13 dispositive motion “is not ordinarily a situation that in and of itself would warrant a stay of  
14 discovery.” *Turner Broad. Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997)  
15 (quotation omitted). Nor does the fact that “discovery may involve some inconvenience and  
16 expense” automatically warrant a stay of discovery. *Id.*

17 In determining whether to stay discovery, the court considers whether (1) the pending  
18 motion is potentially dispositive of the entire case, or at least of the issue on which discovery is  
19 sought; and (2) the potentially dispositive motion can be decided without additional discovery.  
20 *Ministerio Roca Solida v. U.S. Dep’t of Fish & Wildlife*, 288 F.R.D. 500, 506 (D. Nev. 2013).  
21 This analysis requires the court to take a “preliminary peek” at the potentially dispositive motion.  
22 *Tradebay*, 278 F.R.D. at 603. This assessment is meant not to prejudge a motion’s outcome but,  
23 rather, to accomplish the cost- and time-saving objectives of Rule 1 by evaluating the justice of  
24 either permitting or delaying discovery. *Id.* A court may stay discovery when it is convinced that  
25 the plaintiff will be unable to state a claim for relief. *Turner*, 175 F.R.D. at 555. Ultimately, the  
26 party seeking the stay “carries the heavy burden of making a ‘strong showing’ why discovery  
27 should be denied.” *Id.* at 556 (quotation omitted).


1 Here, the court has taken a preliminary peek at Colvin's pending motion to dismiss (ECF  
2 No. 79) and is convinced it likely will be granted. Given that the motion to dismiss implicates the  
3 validity of service of process and the court's jurisdiction over Colvin, the court finds it would be  
4 inefficient to engage in discovery before these threshold jurisdictional issues are resolved. The  
5 court in its discretion therefore will stay discovery pending the outcome of the motion to dismiss.

6 As for Colvin's request for sanctions under the court's inherent authority, the court denies  
7 the motion without prejudice. But Hayden is once again advised that although the court will  
8 liberally construe his filings given that he is not represented by an attorney, he nevertheless is  
9 required to follow the same rules of procedure that govern other litigants. *See Ghazali v. Moran*,  
10 46 F.3d 52, 54 (9th Cir. 1995). Hayden further is advised that under Rule 26(d)(1), "[a] party  
11 may not seek discovery from any source before the parties have conferred as required by Rule  
12 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when  
13 authorized by these rules, by stipulation, or by court order." The court will look with disfavor on  
14 any future filings that do not comply with the Federal Rules of Civil Procedure and the court's  
15 local rules.

16 **III. CONCLUSION**

17 IT IS THEREFORE ORDERED that defendant Gerald D. Colvin's motion to stay  
18 discovery and for a protective order (ECF Nos. 91, 92) is GRANTED in part and is DENIED in  
19 part as stated in this order.

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21 DATED: July 26, 2019

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C.W. HOFFMAN, JR.  
25 UNITED STATES MAGISTRATE JUDGE  
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